- **THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU**
- **+W.P.No. 22104 of 2004**

-

%. 22.02.2005.

# 1.P.Keshava Reddy and another.

.....Petitioners

Vs.

$ 1. The Municipal Commissioner, Manchiryala Municipality,

Manchiryala Municipality, Manchiryala Town, Adilabad

District and others.

.....Respondents

Counsel for the Petitioners : Mr. A.Ravinder

Counsel for the Respondent Nos.1&2: Mr. Polisetti Radhakrishna, S.C. for Municipalities (T.A.)

Counsel for the Respondent No.3: Mr. K.V.Ramana Dora

**<Gist :**

**>Head Note:**

**? Cases referred:**

1. (2002) 8 SCC 715

2. 2005(1) ALD (NOC) 53

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)
TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION NO : 22104 of 2004**

Between:

1. P. Keshava Reddy, S/o. Krishnareddy, @ P.Venkat Reddy,

Hindu, R/o. Balasamudram, Hanumakonda,

Warangal District.
2. P. Damodar Reddy, S/o. Krishnareddy @ P. Venkat Reddy,

Hindu, R/o. Balasamudram, Hanumakonda, Warangal

District.

**..... PETITIONERS**

AND

1. The Municipal Commissioner, Manchiryala Municipality,

Manchiryala Muncipality, Manchiryala Town,

Adilabad District.
2. Chair Person, Manchiryala Municipality,
   Manchiryala Town, Adilabad District.
3. P. Annapurna, W/o. Late P. Mukunda Reddy, Hindu,
   House wife, R/o. Mukundareddy Memorial Hospitals,

Near Gandhi Park, Manchiryala, Adilabad District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Mandamus under Article 226 of Constitution of India declaring the action of the 2nd respondent without hearing the matter by issuing impugned proceeding ROC No. 535/A1/2004 dated 29.10.2004 and passing a resolution No.1188 dated 14.09.2004 by setting aside the proceedings 992/A1/01-03 dated 5-2-2003 without fixing the any date for hearing of the Appeal No. 252 of 2003 is violative of the principles of natural justice. Therefore, declare as null and void and proceedings may be set side ROC NO. 535/A1/2004 dated 29-10-2004. Consequently to direct the 2nd respondent to hear the Appeal No. 252 of 2003 on merits and decide the matter according to law.

**Counsel for the Petitioners: MR.A.RAVINDER**

**Counsel for the Respondent Nos.1&2 : MR.POLISETTI RADHAKRISHNA , S.C. for Municipalities (T.A.)**

**Counsel for the Respondent No.3: MR. K.V.RAMANA DORA.**

**The Court made the following :**

**O R D E R :**

The case, in brief, of the petitioners is that godown bearing Door No.6-3(old) corresponding to new No. 6-8 at vegetable market, Manchiryala, Adilabad district was purchased in 1962 under a registered sale deed in the name of the first petitioner as their joint family property and is being let out to third parties on rent. First respondent (Municipality) even without the consent of the first petitioner and even though there is no partition among them and their brother, was issuing tax receipts in respect of the said property in the name of their brother P.Mukunda Reddy, who died on 23.02.1986. After the death of Mukunda Reddy first respondent, even without notice to them (petitioners) mutated the said property in the name of the widow of Mukunda Reddy i.e. third respondent. After coming to know about the said

fact, first petitioner had on 08.05.2001 made a representation to the first respondent with all the documents, including the registered sale deeds not to issue tax receipts in the name of P.Mukunda Reddy or his legal heirs, and to mutate the property in his name. Therefore, first respondent addressed a letter to the son of the third respondent, to produce the title deeds, but he did not respond. Even then since first respondent did not take further action, first petitioner filed W.P.No.13017 of 2002 seeking a direction to the first respondent to dispose of his representation dated 08.05.2001, and the same was dismissed at the stage of admission. In the Writ Appeal filed by the first petitioner against that order of dismissal first respondent was directed to consider and dispose of the representation dated 08.05.2001 of the first petitioner within a period of six weeks, and consequently first respondent issued proceedings No.992/A1/01-03 dated 05.02.2003 mutating the name of the first petitioner and collected tax and issued a tax receipt for 2002-03 in his name. Thereupon, third respondent filed Appeal No.252 of 2003 to the second respondent (Municipal Council) under Section 345 of A.P. Municipalities Act, challenging the proceedings of the first respondent dated 05.02.2003. After receipt of notice of the said appeal, first petitioner appeared before the second respondent on 29.09.2003. The case was adjourned to 20.10.2003, when first petitioner filed a detailed counter and the case was adjourned to 11.11.2003. Thereafter, neither the first petitioner nor his counsel received any communication about the hearing of the appeal. In the meanwhile, in March, 2003, the third respondent seems to have filed W.P.No.6343 of 2004 and sought a direction to the first respondent to dispose of her Appeal No.253 of 2003 expeditiously, and that the same was allowed at the stage of admission, directing the second respondent to dispose of the appeal within three months from the date of receipt of a copy of the order. Consequently the appeal of the third respondent seems to have been allowed even without notice to the first petitioner and without affording an opportunity of being heard to him, and consequently, the earlier proceedings mutating the property in the name of the first

petitioner seems to have been reversed. Hence, this petition questioning the order of the second respondent.

2. The case of the first respondent is that premises bearing H.No.6-3 (old) corresponding to 6-8 (new) was mutated in the name of P.Mukunda Reddy and he was paying property tax in respect of that property. On a petition by the first respondent that property was mutated in his name. Against that order in Appeal No.252 of 2003 on 18.08.2003, preferred by third respondent, notices were served on the first petitioner, who appeared and filed his counter affidavit on 20.10.2003. Thereafter, in W.P.No.6343 of 2004 filed by the third respondent a direction was given to the second respondent to dispose of the appeal preferred by her within a period of three months. After receipt of that order the appeal was placed before the second respondent, which, after considering the documents and the material on record, passed a resolution allowing the appeal.

3. The case of third respondent is that the case set up by the petitioners that the property is joint family property is not true. Since she became entitled to the property, which was mutated in the name of her husband, after the death of her husband, she submitted an application for mutation of the property in her name, and by the proceedings dated 06.02.2002 the property was mutated in her name. Whileso, she received a caveat petition informing that first respondent passed Orders in proceedings No.992/01-03 dated 05.02.2003 mutating the name of the first petitioner in her place. So she filed Appeal No.252 of 2003. Since the appeal was not heard, she filed a writ petition, in which a direction was given to dispose of the appeal expeditiously. Hence, the petition is liable to be dismissed.

4. The contention of the learned Counsel for the petitioners is that since second

respondent, while disposing of the appeal filed by the third respondent against the first petitioner did not give an opportunity of being heard to the first petitioner, principles of natural justice are violated and in any event since no reasons are mentioned for allowing the appeal, it is clear that the order appealed is a non speaking order and hence is liable to be set aside. He placed strong reliance on *West Bengal Electricity Regulatory Commission v. C.E.S.C.Limited*, and *Toddy Co-operative Society v. Deputy Commissioner of Prohibition and Excise, Nizamabad and others* in support of his contention. It is also his contention that since the procedure prescribed in the Andhra Pradesh Municipalities (Receipts and Disposal of Appeals) Rules, 1967 is not followed, order of the second respondent allowing the appeal of the third respondent is liable to be set aside.

5. The contention of the learned Counsel for the respondents 1 and 2 is that since petitioners were given notice of hearing of the appeal and since first petitioner filed his counter affidavit with relevant documents and since the second respondent after taking into consideration the entire record, decided to allow the appeal, it cannot be said that the petitioner was not given a due opportunity and contends that since giving an opportunity of personal hearing is not mandatory petitioners are not entitled to any relief.

6. The contention of the learned Counsel for third respondent is that, since the property admittedly was standing in the name of P.Mukunda Reddy, husband of the third respondent, third respondent, after the death of her husband gave an application for mutation of the property in her name and so her name was mutated in the registers, in the place of her husband's name and when she came to know that the name of the first petitioner was mutated, by deleting her name, even without notice to her, she filed an appeal and that appeal was allowed and since the allegations in the affidavit filed in support of this petition disclose that the petitioners

are claiming title to the property which cannot be decided by respondents 1 and 2, this petition is not maintainable.

7. Proceedings No.992/A1/01-03 dated 05.02.2003 produced by the petitioners, show that virtue of those proceedings the name of the first petitioner was mutated in place of the name of the third respondent. It is the specific case of the petitioners that on 08.05.2001 first petitioner submitted an application to the first respondent to mutate his name in the registers in the place of the name of his brother-P.Mukunda Reddy, but the proceedings dated 05.02.2003 referred to above show the date of application of the first petitioner as 17.04.2001, but not as 08.05.2001, as claimed in para. 3 of the affidavit filed in support of this writ petition. Significantly petitioners failed to mention as to when the property, which admittedly was standing in the name of their brother i.e. husband of the third respondent, was mutated in the name of the third respondent. As per Rule 3 of the Andhra Pradesh Municipalities (Alteration of ownership of property in Assessment Books) Rules, 1966, "when an application for mutation is filed by a person who is not the 'owner', notice shall have to be issued to the 'owner' and if the 'owner' objects for the proposed alterations, no alterations can be made unless the applicant produces documents to show that ownership is transferred to him". Since 'owner' is not defined in the above said Rules, a close and careful reading of the said Rules show that the 'owner' mentioned therein refers to the person whose name is mutated as owner in the assessment register.

8. In this case by the time first petitioner submitted an application to mutate his name, the property, admittedly, was already mutated in the name of the third respondent consequent on the death of her husband, in whose name the property was standing. So, before considering the said application of the first petitioner, first

respondent ought to have issued a notice to the third respondent and before passing any orders on his application. It is not the case of either the petitioners or the first respondent that notice of the application for mutation submitted by the first petitioner was given to the third respondent, and that an opportunity of being heard was given to the third respondent on the application of the first petitioner to mutate his name in place of the name of the third respondent. So, mutation of the name of first petitioner by deleting the name of third respondent, even without giving an opportunity of being heard to the third respondent, *prima facie* is bad. That error obviously, was set at naught by the second respondent while allowing the appeal preferred by the third respondent against the order mutating the name of the first petitioner in place of her name. Strangely first petitioner, who was not interested in following principles of natural justice, and who could obtain mutation of his name behind the back of third respondent, keeping her in dark about the proceedings initiated by him, is crying fowl for the second respondent; not giving an opportunity of personal hearing, though he was given notice of the appeal and was given an opportunity to file his counter.

9. In my considered opinion, not giving an opportunity of personal hearing to the petitioners or his counsel, in an appeal which has to be decided by the Municipal Council in its meeting cannot be said to be a violation of the principles of natural justice, more so because no such opportunity is contemplated by Rule 7 of the Andhra Pradesh Municipalities (Receipts and Disposal of Appeals) Rules, 1967, which reads

> "The appellate authority, after hearing the parties or their pleader shall record its decision. Such decision may be for conforming, varying or reversing the order against which the appeal is preferred. It shall have power to make any order".

'Hearing of the parties or their pleader' in the above rule cannot be considered as

'personal hearing' and should be taken as an 'opportunity to put forth his case by way of a written statement or counter affidavit'. In this case, admittedly, first petitioner filed his counter affidavit and the same was considered by second respondent. So, it cannot be said that either the above Rule or the principles of natural justice are violated in this case.

10. Both the decisions relied upon by the learned Counsel for the petitioners have no application to the facts of this case, because *West Bengal Electricity Regulatory Commission's* case

(1st supra) relates to determination of electricity tariff by the State Commission, and *Toddy Co-operative Society's* case (2nd supra) relates to hearing of an appeal under the Andhra Pradesh Excise Act, 1968, which is governed by different sets of Rules. More over in those cases, there is no scope for the person aggrieved approaching a Civil Court to remedy the wrong, if any, committed by the forum and the decision rendered by those authorities is final and binding on the parties. That is not so in this case. It is well known that mutation does not confer title. The aggrieved party has a right to approach Civil Court and seek redress. For that reason and for the reason that Rule 7 above quoted does not mandate recording of reasons, second respondent not recording reasons for allowing the appeal, is of no consequence.

11. All these apart it is significant to note that the document relied on by the petitioners is of the year 1962. The fact that that property stood mutated in the name of P.Mukunda Reddy, husband of third respondent and brother of petitioners, till his death, which took place in 1986 is not denied or disputed. There is nothing on record to show that petitioners ever objected to the property being mutated in the name of their brother and his paying taxes in his name, during the life time of their

brother. It is only after the third respondent, the widow of P.Mukund Reddy, filed an application for mutation of her name and got her name mutated, first petitioner, even without putting the third respondent on notice of his application, got his name mutated by deleting the name of the third respondent after obtaining orders from this Court. He seems to have realised the bitterness of the medicine he administered to the third respondent only after he tasted it. So, he can have no ground to complain. Petitioners instead of approaching the Civil Court for establishing their rights, by filing this writ petition are trying to take shelter under the orders obtained by the first respondent behind the back of third respondent and thereby achieve their objective in an indirect fashion.

12. In the above circumstances, I find no merits in this petition. Hence, the writ petition is dismissed. No costs.

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**C.Y.SOMAYAJULU, J.**

**Dated: 22nd February, 2005.**

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NOTE:

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B/O

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ASSISTANT REGISTRAR

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SECTION OFFICER

One fair copy to the Hon'ble Sri Justice C.Y.Somayajulu (For His Lordship's kind perusal).

To

1. The Municipal Commissioner, Manchiryala Municipality,

Manchiryala Muncipality, Manchiryala Town,

Adilabad District.
2. The Chair Person, Manchiryala Municipality,
Manchiryala Town, Adilabad District.

3) 2 C. D copies.

4. 8 L.R. copies.

5. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

6. The Secretary, A.P. Advocates' Association Library, High Court

Buildings, Hyderabad.

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